

ZBA VARIANCE WORK SHEET

Case # _____
For ZBA use only

Applicant: _____

Address: _____ Map/Lot: _____

The purpose of this form is to show consideration of all criteria. Therefore, after reviewing the petition and after hearing all of the evidence, the Board shall consider the following before making a motion to approve or disapprove the request:

1. Would granting this variance be contrary to the public interest?

2. Would granting this variance be consistent with the spirit of the ordinance?

3. Would substantial justice be done by granting this variance?

4. Would granting this variance result in diminished values of surrounding properties?

5. Would literal enforcement of the provisions of the ordinance result in an unnecessary hardship?

a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one.

b. If the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.¹

N.B. The burden of proof lies with the Applicant.

¹ The Legislature's Statement of Intent: The intent of ... this act is to eliminate the separate "unnecessary hardship" standard for "area" variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, Inc. v. Town of Gilford*, 124 N.H. 126 (1983). SB 147 FN 307:5